

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 00-028**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

### **2. Form, Style and Placement in Administrative Code**

a. The use of a “Foreward” in ch. NR 120 is not appropriate drafting style. Can the material be placed in a note?

b. In s. NR 120.02 (1), “Acquisition cost” should replace “It.”

c. In s. NR 120.12, the introductory material should be numbered sub. (1) because it does not introduce and lead into the text and the subsequent subsections. This comment applies also to sub. (2) (intro.) and ss. NR 120.08 (1) (intro.), 120.13 (6) (intro.) and (6) (b) (intro.), 120.18 (3) (intro.), 120.186 (3) (b) (intro.) and 120.27 (2) (intro.).

d. In s. NR 120.16 (5), there must be a title for the subsection because the other subsections have titles.

e. Section NR 120.17 (3) allows the department to “establish alternative eligibility criteria for demonstration projects.” Will these criteria be promulgated as rules? See ss. 227.01 (13) and 227.10 (1), Stats.

### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. NR 120.02 (35), the citation to s. 23.32, Stats., should be to s. 23.32 (1), Stats.

b. In s. NR 120.08 (1) (b) 1. k., the citation to s. NR 120.21 (4) (a) is incorrect. This comment also applies to subd. par. L.

c. In s. NR 120.09 (3) (b), the citation to s. NR 120.18 (1) (a) is incorrect.

d. In s. NR 120.18 (3) (intro.), should par. (qd) be included in the citation of s. 20.115 (7) (c) to be consistent with the definition of “local share” in s. NR 120.02 (21)?

e. In s. NR 120.22 (4), should the citation to s. NR 120.23 be to s. NR 120.25?

##### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the “Foreward” on page 4, line 12, “were” should be replaced with “are.”

b. In s. NR 120.01 (1), should “grant agreement recipients” be replaced with “grant recipients”?

c. In s. NR 120.02 (1), a hyphen should be inserted between “clean” and “up.”

d. In s. NR 120.02 (4), “may” should be replaced with “does.”

e. In s. NR 120.02 (15) and elsewhere in the rule, “, but not limited to,” should be deleted. Also see s. NR 120.22 (2).

f. In s. NR 120.02 (16), what is meant by “eligible to incur costs”?

g. In s. NR 120.02 (19), the second instance of “Land conservation committee” should be enclosed with quotation marks.

h. In s. NR 120.02 (22), “or “WPDES permit”” should be inserted after ““Municipal WPDES storm water discharge permit”” because “WPDES permit” is used in s. NR 120.17.

i. In s. NR 120.02 (24), “the certified letters” should be replaced with “a certified letter.”

j. In s. NR 120.02 (29), “one of those watersheds” should be replaced with “a watershed.”

k. In s. NR 120.02, should a definition of “structural urban best management practices” be inserted after sub. (33) to be consistent with the statutes?

l. In s. NR 120.02 (34), “that was” should be deleted and “on the effective date of this chapter” should be inserted after “in effect.” Also, “(INSERT DATE)” should be replaced with “(revisor inserts date).” This comment applies also to s. NR 120.16 (4) (d).

m. In s. NR 120.08 (1) (a) 5., what is meant by “by criteria”?

- n. In s. NR 120.08 (2) (f), “also” should be deleted.
- o. In s. NR 120.09 (1), it would be helpful to insert “under sub. (2)” at the end of the last sentence.
- p. In s. NR 120.09 (3) (a), a hyphen should be inserted between “36” and “month.”
- q. In s. NR 120.09 (7), “provided that” should be replaced with “if.”
- r. In s. NR 120.12, should “or state agency” follow every instance of “governmental unit” as it does in the first sentence?
- s. In s. NR 120.12 (2), hyphens should be inserted between “sign” and “up” in every instance.
- t. In s. NR 120.12 (2) (a), a phrase such as “all the following conditions are met” should be inserted before the colon. Finally, the subsequent subdivisions should end with periods to facilitate amending the paragraph in the future.
- u. In s. NR 120.12 (3) and elsewhere in the rule, “where” should be replaced with “if.” Also see ss. NR 120.13 (6) (b) 1., 120.15 (1) and (2) and 120.23 (1) (c).
- v. In s. NR 120.12 (4) (intro.), “do all of the following” should be inserted at the end of the sentence.
- w. In s. NR 120.12 (8), “on cost-share agreements” should be replaced with “in cost-share agreements.”
- x. In s. NR 120.13 (3) (a), “Should other practices be included through” should be replaced with “If other practices are included in.”
- y. In s. NR 120.13 (4) (f), “A requirement to not adopt” should be replaced with “A prohibition against adopting.”
- z. In s. NR 120.13 (4) (h), please clarify what is meant by a “nondiscrimination clause.”
- aa. In s. NR 120.13 (4) (k), “A requirement that disallows any change” should be replaced with “A prohibition against changing.”
- ab. In s. NR 120.13 (4m), “the cost of” should be inserted before “a single practice.”
- ac. In s. NR 120.13 (5), in the first sentence, “or” should be replaced with “and.” Also in that subsection, “least cost alternatives” is an awkward phrase and should be reviewed. Could “lowest cost alternatives for controlling” replace “least cost alternatives to controlling”?
- ad. Section NR 120.13 (6) (intro.) should be reviewed. Is the intent that the cost-share agreement period is the period from when the cost-share agreement is signed until the

installation of the last practice on the agreement unless there is a subsequent operation and maintenance period? Please clarify.

ae. In s. NR 120.13 (6) (b) 1. d., and in subsequent provisions, parenthetical phrases should be avoided. [See s. 1.01 (6), Manual.]

af. In s. NR 120.13 (8) (a), “if” should replace “providing that.” Also see s. NR 120.186 (3) (f).

ag. In s. NR 120.13 (11) (a), in the second to last sentence, “can” should be replaced with “may.”

ah. In s. NR 120.16 (2), “these ordinances” should be replaced with “ordinances under sub. (1).” Also, “(ADD REFERENCE)” should be deleted. Also, in the last sentence, “Additional” should be deleted and “, once enacted, will be” should be replaced with “are.”

ai. In s. NR 120.16 (3), “The ordinance” should be replaced with “An ordinance under sub. (1).”

aj. In s. NR 120.16 (4) (e), the two additional periods at the end of the sentence should be deleted.

ak. In s. NR 120.16 (5), “The ordinance” should be replaced with “An ordinance required under sub. (1).”

al. In s. NR 120.17 (2) (L), “Installing” should be inserted at the beginning of the sentence.

am. In s. NR 120.17 (2) (w), should “Purchase of” be inserted at the beginning of the sentence?

an. In s. NR 120.18 (1) (b) (intro.), please clarify what the subsequent subdivisions apply to.

ao. In s. NR 120.18 (1) (c) 7., “are” should be deleted. In subd. 7. a., the parenthetical material should be placed in a note at the end of the subdivision.

ap. In s. NR 120.18 (4) (a), “can demonstrate” should be replaced with “demonstrates.”

aq. In s. NR 120.18 (4) (b), “can” should be replaced with “shall.”

ar. In s. NR 120.18 (4) (b.) 1., what is meant by “a compilation of financial conditions”?

as. In s. NR 120.18 (4) (c), “Under” should be replaced with “If there is.”

at. In s. NR 120.18 (4) (d), “Under the provision, if” should be replaced with “If there is a finding of.”

au. In s. NR 120.185 (2) (c), “when” should be replaced with “if.”

av. In s. NR 120.185 (3), “thereafter” should be deleted.

aw. In s. NR 120.186 (1) (intro.), a phrase such as “do any of the following” should be inserted at the end of the (intro.); in par. (a), “; or” should be replaced with a period.

ax. In s. NR 120.186 (2) (intro.), “all of” should be inserted in the last sentence before “the following.”

ay. In s. NR 120.186 (2) (a), “under which the grant is applied for” should be replaced with “for which the grant is applied.”

az. In s. NR 120.186 (3) (e), what is meant by “description”?

ba. In s. NR 120.186 (3) (g), should the provision specify that the deed must be recorded with the register of deeds?

bb. In s. NR 120.186 (5) (intro.), a colon should replace the period.

bc. In s. NR 120.186 (5) (f), “the acquisition shall be” should be replaced with “that the acquisition is.”

bd. In s. NR 120.19 (1) (intro.), the sentence should end with a colon.

be. In s. NR 120.22 (1), “other equitable manner” should be replaced with “in another equitable manner.”

bf. In s. NR 120.23 (1) (b), “the department has verified” should be replaced with “department verification of.”

bg. In s. NR 120.23 (1) (d) 1., “legislative appropriations to fund those payments” could be replaced with “funding.”

bh. In s. NR 120.23 (1) (d) 2., “the program” should be replaced with “the nonpoint source water pollution abatement program.”

bi. In s. NR 120.23 (3) (b), there is no subd. 5. Is this intended?

bj. In s. NR 120.23 (3) (b) 4., should “completed” be inserted after “components of”?

bk. In s. NR 120.23 (3) (b) 7., how will the department set deadlines?

bl. In s. NR 120.23 (5), “(ACRA)” should be deleted because it is a defined term.

bm. In s. NR 120.24 (3), the subsequent paragraphs should end with periods to facilitate amending the subsection in the future. Also, “all of the following” should be inserted before the colon in sub. (3) (intro.). Also see s. NR 120.25 (1) (intro.).

bn. In s. NR 120.25 (1) (a), it may be helpful to include a cross-reference after the phrase “department reporting requirements.”

bo. In s. NR 120.25 (1) (c), will it be clear to the reader what is meant by “on a watershed basis”?

bp. In s. NR 120.25 (1) (d), “allocability” is not a word. Could “allocation” or “ability to allocate” be used?

bq. In s. NR 120.25 (1) (f), it would be helpful to include a cross-reference following the phrase “audit findings.”

br. In s. NR 120.25 (2) (b), “account” could be replaced with “document” or “describe.”

bs. In s. NR 120.26 (1) (b) (intro.), a phrase such as “for whichever of the following is appropriate” should be inserted at the end of the sentence. Also, the subsequent subdivisions should end in periods.

bt. In s. NR 120.26 (1) (c) (intro.), “all of” should be inserted before “the following” and the subsequent subdivisions should end in periods.

bu. In s. NR 120.27 (1), “stop-work order” should not be enclosed in quotation marks.

bv. In s. NR 120.27 (1) (b) 3., “by” should be inserted before “certified mail.”

bw. In s. NR 120.27 (1) (c) 2., “as to how the acquisition of” should be replaced with “for how the grantee may acquire.”

bx. In s. NR 120.27 (1) (d) 2. (intro.), “either” should be replaced with “do one of the following” and the subsequent subdivision paragraphs should end in periods.

by. In s. NR 120.27 (1) (e) (intro.), “all of the following conditions are met” should be inserted at the end of the sentence and the subsequent subdivisions should end in periods.

bz. In s. NR 120.27 (2) (a), “to” should be inserted after “due.”

ca. In s. NR 120.27 (2) (c) 1. and 2., “mail, certified mail--return receipt requested” should be replaced with “certified mail, return receipt requested.”

cb. Section NR 120.28 (2) (intro.) should end with a colon. Also, the subsequent paragraphs should end with periods. Finally, in par. (c), “under s. NR 120.23 (1) (c) 1.” should be replaced with “if the conditions under s. NR 120.23 (1) (c) 1. are met.”

cc. In s. NR 120.28 (3), what is meant by a “notice of intent”? Would a cross-reference be helpful?